

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-SJ-050
Radio X Broadcasting Corporation)	
Bayamon, Puerto Rico)	NAL/Acct. No. 200232680008
)	
)	FRN 0003762150
)	

FORFEITURE ORDER

Adopted: November 6, 2003

Released: November 10, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000), to Radio X Broadcasting Corporation ("Radio X"), licensee of Station WXLX(FM), Lajas, Puerto Rico, and owner of antenna structure number 1043256, Cabo Rojo, Puerto Rico, for willful violation of Sections 17.50 and 73.3526(b) of the Commission's Rules ("Rules").¹ The noted violations involve Radio X's failure to clean and repaint its antenna structure to maintain good visibility and its failure to maintain the Station WXLX(FM)'s public inspection file at the main studio.

2. On September 5, 2002, the Commission's San Juan, Puerto Rico Resident Agent Office ("San Juan Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL")² in the amount of twenty thousand dollars (\$20,000) to Radio X. Radio X filed a response on September 19, 2002.

II. BACKGROUND

3. On August 21, 2002, Commission agents from the San Juan Office inspected the WXLX(FM) antenna structure number 1043256 owned by Radio X. At the time of the inspection, the agents observed that the antenna structure's aviation orange and white paint was extremely faded and chipped, which reduced the visibility of the structure. The Commission's antenna structure registration ("ASR") database indicated that the structure is required to be painted. Also on August 21, 2002,

¹ 47 C.F.R. §§ 17.50 and 73.3526(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232680008 (Enf. Bur., San Juan Office, released September 5, 2002).

Commission agents conducted an inspection of WXLX(FM)'s main studio. The agents found that the public inspection file was not available for inspection. The operator on duty during the inspection stated that the public inspection file was kept at the station owner's office in Bayamon, Puerto Rico, which is over 100 miles from the city of license. On September 5, 2002, the San Juan Office issued a *NAL* for the antenna structure and public inspection file violations. On September 19, 2002, Radio X submitted a response to the *NAL*. In its response, Radio X accepted the findings of the San Juan Office regarding both the condition of the antenna structure and the location of the public inspection file. Nevertheless, Radio X requests substantial reduction or cancellation of the forfeiture citing the immediate measures it took to correct the violations noted in the *NAL*. The response is also accompanied by financial statements.

III. DISCUSSION

4. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Radio X's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

5. Section 17.50 of the Rules provides that antenna structures requiring painting under the rules shall be cleaned or repainted as often as necessary to maintain good visibility. Antenna structure number 1043256, owned by Radio X, has specified lighting and painting requirements that include painting the structure with alternating bands of aviation orange and white. On August 21, 2002, agents from the San Juan Office determined that Radio X's antenna structure number 1043256 had extremely faded and chipped aviation orange and white paint which obscured the structure's visibility. Radio X does not dispute the agents' finding that the antenna structure needed to be cleaned and painted to be sufficiently visible. Indeed, Radio X acknowledges that it was aware that its antenna structure needed to be painted and states that it was in the process of obtaining bids to have it painted, although it does not provide any documentation to support this assertion. Therefore, we find that its violation of Section 17.50 was willful.⁶

6. Section 73.3526(b) of the Rules requires commercial broadcast stations to maintain a public inspection file at the main studio of the station. On August 21, 2002, no public file for Station WXLX(FM) was present during the agents' inspection of the main studio. Radio X does not challenge the agents' finding

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

that the public inspection file was not available for inspection. In light of Radio X's conscious decision to move the public inspection file to a location other than the main studio, we find that its violation of Section 73.3526(b) of the Rules was willful.

7. Radio X does, however, request substantial reduction or cancellation of the proposed forfeiture because it took immediate measures to remedy the violations noted by the *NAL*. We note that the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.⁷ Finally, Radio X submits copies of its financial statements for fiscal years 2000 and 2001 for what we perceive to be a claim of inability to pay the proposed forfeiture amount. To the extent that the financial statements were submitted in an attempt by Radio X to claim an inability to pay the proposed forfeiture, we note that it supplemented its financial statements with a statement indicating that no cash transactions were effectuated by Radio X during 2001 and 2000 and that its parent company made "all payments" for it in those years. We must look to the totality of the circumstances surrounding Radio X's ability to pay the forfeiture. The parent company's ability to pay, therefore, is relevant in evaluating the subsidiary company's ability to pay the forfeiture.⁸ Because Radio X has not provided sufficient information from which we can evaluate the financial condition of its parent company, we must reject its inability to pay claim.

8. We have examined Radio X's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Radio X willfully violated Sections 17.50 and 73.3526(b) of the Rules and find that neither cancellation nor reduction of the proposed monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Radio X Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willfully violating Sections 17.50 and 73.3526(b) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232680008, and FRN 0003762150. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

⁷ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973).

⁸ See, e.g., *Forfeiture Policy Statement* at 17158, para. 113.

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Radio X Broadcasting Corporation, HC 67 Box 15390, Bayamon, Puerto Rico 00956-9535.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau